

1 **Rule 101. Motion practice before court commissioners.**

2 (a) **Written motion required.** An application to a court commissioner for
3 an order shall be by motion which, unless made during a hearing, shall be
4 made in accordance with this rule. A motion shall be in writing and state
5 succinctly and with particularity the relief sought and the grounds for the relief
6 sought. Any evidence necessary to support the moving party's position shall
7 be presented by way of one or more affidavits or declarations. The moving
8 party may also file a supporting memorandum.

9 (b) **Time to file and serve.** The moving party shall file the motion and
10 ~~attachments~~ any supporting papers with the clerk of the court and obtain a
11 hearing date and time. The moving party shall serve the responding party with
12 the motion and ~~attachments and supporting papers, together with~~ notice of the
13 hearing at least ~~14~~ 28 calendar days before the hearing. ~~A party may file and~~
14 ~~serve with the motion a memorandum supporting the motion.~~ If service is
15 more than 90 days after the date of entry of the most recent appealable order,
16 service may not be made through counsel.

17 (c) **Response; reply.** ~~The responding party~~ opposing a motion may file a
18 response, consisting of any responsive memorandum, affidavit(s) or
19 declaration(s). The response shall file be filed and serve served on the moving
20 ~~party with a response and attachments at least 7~~ 14 calendar days before the
21 hearing. ~~A party may file and serve with the response a memorandum~~
22 ~~opposing the motion. The moving party may file and serve the responding~~
23 ~~party with a reply and attachments at least 3 business days before the~~
24 ~~hearing. The reply is limited to responding to matters raised in the response.~~

25 (d) **Reply.** The moving party may file a reply, consisting of any reply
26 memorandum, affidavit(s) or declaration(s). The reply shall be filed and served
27 on the opposing party at least 7 calendar days before the hearing. The

28 contents of the reply shall be limited to rebuttal of new matters raised in the
29 memorandum opposing the motion.

30 (e) **Counter motion.** Opposing a motion is not sufficient to grant relief to
31 the responding party. An opposing party may request affirmative relief by way
32 of a counter motion. A counter motion need not be limited to the subject
33 matter of the original motion. All of the provisions of this rule apply to counter
34 motions except that a counter motion shall be filed and served with the
35 response. The response to the counter motion shall be filed and served no
36 later than the reply. The reply to the response to the counter motion shall be
37 filed and served at least 3 business days before the hearing. Any such reply
38 must be served in a manner that will cause the reply to be actually received by
39 the party opposing the counter motion (i.e. hand-delivery, fax or other
40 electronic delivery as allowed by rule or agreed by the parties) at least 3
41 business days before the hearing. A separate notice of hearing on counter
42 motions is not required.

43 ~~(d) **Attachments; objection to failure to attach.**~~

44 ~~(d)(1) As used in this rule “attachments” includes all records, forms,~~
45 ~~information and affidavits necessary to support the party’s position.~~

46 ~~Attachments for motions~~ (f) **Necessary documentation.** Motions and
47 responses regarding temporary orders concerning alimony shall include, child
48 support, division of debts, possession or disposition of assets, or litigation
49 expenses, shall be accompanied by verified financial declarations with
50 documentary income verification and a financial declaration attached as
51 exhibits, unless such financial declarations and documentation are already in
52 the court's file and remain current. Attachments for motions and responses
53 regarding child support and child custody shall also include income
54 verification, a financial declaration and a child support worksheet. A financial
55 declaration shall be verified.

56 ~~(d)(g)~~ **No other papers.** No moving or opposing papers other than those
57 specified in this rule shall be permitted.

58 **(h) Exhibits; objection to failure to attach.**

59 (h)(1) Except as provided in paragraph (h)(3) of this rule, any
60 documents such as tax returns, bank statements, receipts, photographs,
61 correspondence, calendars, medical records, forms, or photographs shall
62 be supplied to the court as exhibits to one or more affidavits (as
63 appropriate) establishing the necessary foundational requirements. Copies
64 of court papers such as decrees, orders, minute entries, motions, or
65 affidavits, already in the court's case file, shall not be filed as exhibits.
66 Court papers from cases other than that before the court, such as
67 protective orders, prior divorce decrees, criminal orders, information or
68 dockets, and juvenile court orders (to the extent the law does not prohibit
69 their filing), may be submitted as exhibits.

70 (h)(2) If-attachments papers or exhibits referred to in a motion or
71 necessary to support the moving party's position are not served with the
72 motion, the responding party may file and serve an objection to the defect
73 with the response. If-attachments papers or exhibits referred to in the
74 response or necessary to support the responding opposing party's position
75 are not served with the response, the moving party may file and serve an
76 objection to the defect with the reply. The defect shall be cured within 2
77 business days after notice of the defect or at least-23 business days
78 before the hearing, whichever is earlier.

79 ~~(e) **Courtesy copy.** Parties shall deliver to the court commissioner a~~
80 ~~courtesy copy of all papers filed with the clerk of the court within the time~~
81 ~~required for filing with the clerk. The courtesy copy shall state the name of the~~
82 ~~court commissioner and the date and time of the hearing.~~

83 (f)(h)(3) Voluminous exhibits which cannot conveniently be examined in
84 court shall not be filed as exhibits, but the contents of such documents
85 shall be presented in the form of a summary, chart or calculation under
86 Rule 1006 of the Utah Rules of Evidence. Unless they have been
87 previously supplied through discovery or otherwise and are readily
88 identifiable, copies of any such voluminous documents shall be supplied to
89 the other parties at the time of the filing of the summary, chart or
90 calculation. The originals, or duplicates, of the documents shall be
91 available at the hearing for examination by the parties and the
92 commissioner. Collections of documents, such as bank statements,
93 checks, receipts, medical records, photographs, e-mails, calendars and
94 journal entries, that collectively exceed ten pages in length, shall be
95 deemed to be overly voluminous and shall be presented in summary form.
96 Individual documents with specific legal significance, such as tax returns,
97 appraisals, financial statements and reports prepared by an accountant,
98 wills, trust documents, contracts, or settlement agreements, shall not be
99 presumed to be overly voluminous, regardless of length, and should be
100 submitted in their entirety.

101 (i) **Length.** Initial memoranda shall not exceed 10 pages of argument
102 without leave of the court. Response and reply memoranda shall not exceed 5
103 pages of argument without leave of the court. The total number of pages
104 submitted to the court by each party shall not exceed 25 pages, including
105 affidavits, attachments and summaries, but excluding financial declarations
106 and income verification. The court commissioner may permit the party to file
107 an over-length memorandum upon ex parte application and showing of good
108 cause.

109 (j) **Late filings; sanctions.** If a party files or serves papers beyond the
110 time required in ~~subsections (b) or (c),~~ this rule, the court commissioner may

111 hold or continue the hearing, reject the papers, impose costs and attorney
112 fees caused by the failure and by the continuance, and impose other
113 sanctions as appropriate.

114 ~~(g) **Counter motion.** Opposing a motion is not sufficient to grant relief to~~
115 ~~the responding party. An application for an order may be raised by counter~~
116 ~~motion. This rule applies to counter motions except that a counter motion shall~~
117 ~~be filed and served with the response. The response to the counter motion~~
118 ~~shall be filed and served no later than the reply. The reply to the response to~~
119 ~~the counter motion shall be filed and served at least 2 business days before~~
120 ~~the hearing. A separate notice of hearing on counter motions is not required.~~

121 ~~(h) **Limit on hearing.** The court commissioner shall not hold a hearing on~~
122 ~~a motion before the deadline for an appearance by the respondent under Rule~~
123 ~~12.~~

124 ~~(i)(k) **Limit on order to show cause.** An application to the court for an~~
125 ~~order to show cause shall be made only for enforcement of an existing order~~
126 ~~or for sanctions for violating an existing order. An application for an order to~~
127 ~~show cause must be supported by affidavit or other evidence sufficient to~~
128 ~~show cause to believe a party has violated a court order.~~

129 ~~(j)(l) **Hearings.**~~

130 (l)(1) The court commissioner shall not hold a hearing on a motion for
131 temporary relief before the deadline for an appearance by the respondent
132 under Rule 12.

133 (l)(2) Unless the court commissioner specifically requires otherwise,
134 when the statement of a person is set forth in an affidavit, declaration or
135 other document accepted by the commissioner, that person need not be
136 present at the hearing. The statements of any person not set forth in an
137 affidavit, declaration or other acceptable document may not be presented

138 by proffer unless the person is present at the hearing and the
139 commissioner finds that fairness requires its admission.

140 **(m) Motions to judge.** The following motions shall be to the judge to whom
141 the case is assigned: motion for alternative service; motion to waive 90-day
142 waiting period; motion to waive divorce education class; motion for leave to
143 withdraw after a case has been certified as ready for trial; and motions in
144 limine. A court may provide that other motions be ~~to~~ considered by the judge.

145 **(n) Objection to court commissioner's recommendation. A**
146 recommendation of a court commissioner is the order of the court until
147 modified by the court. A party may object to the recommendation by filing an
148 objection under Rule 108.

149 **Committee Notes**

150 ~~The 2014 amendments changed the deadline in paragraph (c) from 5~~
151 ~~business days to 7 days as part of the adoption of the federal “days-are-days”~~
152 ~~approach to calculating time. That is, intervening weekends and holidays are~~
153 ~~included in the calculation even for relatively short periods of time. The~~
154 ~~amendments also deleted “calendar” from paragraph (b), but the application of~~
155 ~~the 2014 reenactment of Rule 6 yields the same result. However, the~~
156 ~~amendments did not change the deadlines of two and three business days in~~
157 ~~paragraphs (c), (d) and (g). These remain exceptions to the general approach.~~